

Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status

1. Jurisdiction by law (40 C.F.R. § 1508.15) – for example, agencies with the authority to grant permits for implementing the action [federal agencies shall be a cooperating agency_(1501.6); non-federal agencies may be invited (40 C.F.R. § 1508.5)]:

- Does the agency have the authority to approve a proposal or a portion of a proposal?
- Does the agency have the authority to veto a proposal or a portion of a proposal?
- Does the agency have the authority to finance a proposal or a portion of a proposal?

2. Special expertise (40 C.F.R. § 1508.26) – cooperating agency status for specific purposes linked to special expertise requires more than an interest in a proposed action [federal and non-federal agencies may be requested (40 C.F.R. §§ 1501.6 & 1508.5)]:

- Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility?
- Does the cooperating agency have the expertise developed to carry out an agency mission?
- Does the cooperating agency have the related program expertise or experience?
- Does the cooperating agency have the expertise regarding the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

3. Do the agencies understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?

4. Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

5. Can the cooperating agency, in a timely manner, aid in:

- identifying significant environmental issues [including aspects of the human environment (40 C.F.R. § 1508.14), including natural, social, economic, energy, urban quality, historic and cultural issues (40 C.F.R. § 1502.16)]?
- eliminating minor issues from further study?
- identifying issues previously the subject of environmental review or study?
- identifying the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

(40 C.F.R. §§ 1501.1(d) and 1501.7)

6. Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

7. Can the cooperating agency provide resources to support scheduling and critical milestones such as:

- personnel? Consider all forms of assistance (e.g., data gathering; surveying; compilation; research).
- expertise? This includes technical or subject matter expertise.
- funding? Examples include funding for personnel, travel and studies. Normally, the cooperating agency will provide the funding; to the extent available funds permit, the lead agency shall fund or include in budget requests funding for an analyses the lead agency requests from cooperating agencies. Alternatives to travel, such as telephonic or video conferencing, should be considered especially when funding constrains participation.
- models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.
- facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

8. Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues and analyses? For example, are either the lead or cooperating agencies unable or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses?

9. Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

10. Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

11. Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating status. Agencies must be alert to situations where state law requires release of information.

12. Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

The factors provided for extending cooperating agency status are not intended to be all-inclusive. Moreover, satisfying all the factors is not required and satisfying one may be sufficient. Each determination should be made on a case-by-case basis considering all relevant information and factors.